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## Appeals Court Offers Disclosures In Rescuecom Suit

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As the closely watched trademark dispute between **Google** Inc. and computer repair firm Rescuecom Corp. heads towards its April 3 oral arguments, the appellate court overseeing the case has issued a couple of disclosures about one of the judges on its panel.

On Tuesday, the U.S. Court of Appeals for the Second Circuit posted a notice in the case offering some disclosures about Circuit Judge Pierre N. Leval and his relationships with Google and William Patry, who is part of the legal team at Google.

The appellate court asked the parties to submit any motions for recusal by Friday, but a search of the docket revealed that no motions had been filed by the deadline.

According to the notice submitted by the appellate court, Judge Leval took part in a two-day conference focused on Internet issues sponsored by Google and the Stanford Law School earlier this month.

The conference paid travel, lodging and board expenses for all attendees, who included professors, writers, lawyers, government representatives, judges, Stanford law students and "participants in the Internet from the profit and not-for-profit sectors," the Second Circuit explained.

Judge Leval was invited to the panel a year ago, and made sure prior to his visit that the panel he was scheduled to take part in did not involve trademark law or any issues involved in the Rescuecom case.

"On one evening, the conferees were hosted for dinner by Google at its campus," the Second Circuit revealed. "During the two days, Judge Leval met and chatted briefly with Google representatives who were involved in organizing the conference."

Secondly, the Second Circuit said that Judge Leval has been friends with Patry, who has worked for Google for the past two years, for 20 years.

The two have known each other since Patry was "employed in the United States Copyright Office in the Library of Congress and as Copyright Counsel to the U.S. House of Representatives, Committee on Intellectual Property," the appellate court said.

Patry did not participate in the Stanford Law Conference, the court added.

Despite these facts, the Second Circuit said Judge Leval was "confident that these contacts with Google Inc. would in no way influence his consideration of the case."

Leval is set to hear oral arguments in the Rescuecom case on April 3 with Circuit Judges Guido Calabresi and Richard C. Wesley.

Rescuecom launched the appeal a year and a half ago after the U.S. District Court for the Northern District of California ruled that selling a trademark to trigger sponsored links doesn't constitute use under the Lanham Act because the mark wasn't placed on goods, containers, displays or advertisements and wasn't visible to the public.

The computer services company originally filed suit against Google in 2004, claiming that Google's practice of promoting and selling the term "rescuecom" as a Google search keyword to Rescuecom's competitors violated

the company's trademark.

Finding in favor of Google, the district court dismissed the suit in September 2006. Rescuecom appealed.

Appellate briefs were filed in January and February 2007, but the Second Circuit did not schedule oral arguments until early this year.

**Yahoo**, **AOL** and Ebay had asked the appellate court to grant them leave to file an amicus brief, but the court denied that motion on March 18.

Rescuecom is represented in this matter by attorneys from the Office of Edmund J. Gegan.

Google is represented by attorneys from **Keker & Van Nest** LLP.

The case is Rescuecom Corp. v. Google Inc., case number 06-4881 in the U.S. Court of Appeals for the Second Circuit.

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